

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI,)	No. ED104363
)	
Respondent,)	Appeal from the Circuit Court
)	of Montgomery County
vs.)	14AA-CR00114-01
)	
CARY L. BANEY,)	Honorable Wesley C. Dalton, III
)	
Appellant.)	Filed: April 18, 2017

Cary L. Baney, a chiropractor, was found guilty by a jury in the circuit court of Montgomery County of one count of deviate sexual assault arising out of the unwelcome touching by Baney of a female patient's genitals with his hand during an office visit in August 2013. Baney was sentenced to five years' imprisonment. Baney appeals, asserting three points of error: (1) that the trial court erred in denying his amended motion for a new trial based on the post-trial discovery that C.P. ("Victim") was seeking a monetary settlement from Baney's insurance company because the new evidence would likely result in Baney's acquittal; (2) that the trial court erred in denying his motion for a new trial because a comment made by prospective juror number thirty-eight ("Prospective Juror 38") during *voir dire* tainted the panel and the State used the prejudicial comment in closing argument to improperly prejudice the jury against Baney; and (3) that the trial court erred in denying his motions for judgment of acquittal because the State failed to adduce sufficient, credible evidence to make a submissible case.

AFFIRMED.

DIVISION FOUR HOLDS: As to point I, the trial court did not abuse its discretion in denying Baney's claim because the lack of prior knowledge about Victim's motive was due in large part to Baney's failure to ask Victim about her motive. As to point II, Baney failed to preserve this argument by failing to object to the State's closing argument at trial and we decline plain error review. Last, point III is denied because the State adduced sufficient evidence at trial to support Baney's conviction. Victim's testimony alone was sufficient evidence to support Baney's conviction. The judgment is affirmed.

Opinion by: James M. Dowd, P.J.

Kurt S. Odenwald, J., and Gary M. Gaertner, Jr., J. concur.

Attorney for Appellant: Matthew A. Radefeld and Michael B. Murphy

Attorney for Respondent: Daniel N. McPherson

<p>THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.</p>
